



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 – 2733

MAY - 8 2017

The Honorable Mark Mitchell
Governor
Pueblo of Tesuque
Route 42 Box 360-T
Santa Fe, NM 87506

Dear Governor Mitchell:

The Environmental Protection Agency (EPA) has completed its review of the new and revised provisions in the *Pueblo of Tesuque Water Quality Standards*. These water quality standards were adopted by the Pueblo of Tesuque in November 2015 and submitted to EPA for approval in December 2015. I am pleased to inform you that EPA is approving the revisions as documented in Part I of the enclosure to this letter, pursuant to section 303(c) of the Clean Water Act and the implementing regulation at 40 CFR part 131. These provisions include:

- narrative criteria for biological integrity of the aquatic community;
- narrative and numeric criteria for water flow;
- revised aquatic life criteria for ammonia, and,
- modifications to the provisions for compliance schedules, primary contact and irrigation uses, definitions, and
- non-substantive revisions, including editorial changes.

Section 7(a)(2) of the Endangered Species Act (ESA) requires that all federal agencies engage in consultation to ensure their actions are not likely to jeopardize the continued existence of any threatened or endangered species or result in adverse modification of designated critical habitat. EPA has determined that approval of new or revised provisions in the Pueblo of Tesuque standards will have no effect on federally-listed threatened and endangered species or on critical habitat.

EPA has also reviewed its previous actions on the 2005 triennial revision of the *Pueblo of Tesuque Water Quality Standards*, in which it approved several provisions subject to completion of consultation under the ESA. Based on the evaluation conducted for the 2015 triennial revision, EPA concludes that there is no effect on federally-listed species or on critical habitat, as a result of its previous approval of the 2005 revision. These provisions are identified in Part II of the enclosure and include: revised narrative criteria for aesthetics, modifications to the mixing zone provision, and revised numeric criteria for protection of aquatic life and livestock.

Under Section IV. E. Livestock Watering & Wildlife Habitat Use, F. Irrigation Use, and G. Groundwater Recharge, the units in the heading of each criteria table were inadvertently revised from milligrams/liter to micrograms/liter. As noted in Part III of the enclosure, EPA is taking no action on this clerical error.

We look forward to continuing to work with you and your staff on the Pueblo of Tesuque's water quality program. If you have any questions or concerns, please contact me at (214) 665-7101 or have your staff contact Diane Evans at (214) 665-6677.

Sincerely,



William K. Honker, P.E.
Director
Water Division

Enclosure

cc: Miguel Montoya, Water Quality Specialist
Pueblo of Tesuque Environment Department

EPA'S REVIEW OF *PUEBLO OF TESUQUE WATER QUALITY STANDARDS* (April 2017)

The Environmental Protection Agency's (EPA's) action addresses the revisions to the *Pueblo of Tesuque Water Quality Standards* adopted in November 2015. The revised water quality standards (WQS) were submitted to EPA in December 2015. This enclosure provides a summary of the revisions and the action taken by EPA including: Part I. Revisions in the 2015 WQS that are approved for purposes of Clean Water Act (CWA) section 303(c); Part II. Revisions that were previously approved for purposes of CWA section 303(c); and Part III. Revisions in the 2015 WQS for which EPA is taking no action under CWA section 303(c).

I. REVISIONS IN THE 2015 WQS THAT ARE APPROVED FOR PURPOSES OF CWA SECTION 303(C)

Section I. Introduction, Authority, and Applicability

Part G. Compliance Schedules. The Pueblo of Tesuque removed the stipulation that a compliance schedule in a National Pollutant Discharge Elimination System (NPDES) permit be limited to no more than three years to complete treatment modifications to meet permit requirements. Consistent with the federal regulation at 40 CFR 122.47(a)(1)) and EPA guidance, the provision specifies that compliance be met at the earliest practical time.

EPA review: The change from a three-year limitation to the earliest practicable time is consistent with federal permitting regulation (40 CFR 122.47(a)(1)) and EPA guidance. EPA approves this revision.

Part K. Biological Integrity of the Aquatic Community. The Pueblo of Tesuque adopted a narrative biological criterion for protection of the aquatic community in waters with an aquatic life use.

EPA review: EPA finds that the provision in Part K is consistent with EPA guidance, the CWA and the federal requirements at 40 CFR 131.11. EPA approves this provision.

Section III. General Standards

Part P. Water Flow. The Pueblo of Tesuque adopted narrative and numeric criteria for stream flow. The narrative statement references recommended practices and programs to maintain beneficial uses of water resources. A minimum base flow of 1.0 cubic feet per second (cfs) for the Rio Tesuque was adopted to maintain wildlife and fish communities, and scenic, aesthetic, cultural and other values.

EPA review: The CWA articulates the ability to regulate the chemical, physical, and biological integrity of waters. To the extent that this provision enables the Pueblo of Tesuque to regulate chemical, physical, and biological integrity of tribal waters for the protection of designated uses, it is consistent with the CWA and approved by EPA.

Nothing in this approval shall be construed to supersede or abrogate rights to quantities of water which have been established by any Indian tribe or state.

Section IV. Water Body Uses and Standards Specific to Use

Part F. Irrigation Use. The Pueblo of Tesuque removed the fecal coliform bacteria criterion associated with the irrigation use. The criteria for *E. coli* bacteria under the Primary Contact use are protective of irrigation uses.

EPA review: The fecal coliform criterion in the 2005 Pueblo of Tesuque standards was based on the value recommended in EPA's Blue Book.¹ However, a more protective criterion for pathogens under the primary contact use is applicable to all Pueblo of Tesuque surface waters with a designated irrigation use. In addition, the Pueblo of Tesuque, and most other states and tribes, no longer monitor for fecal coliform criteria for assessment of surface water quality. Instead, most states and tribes utilize criteria for *E. coli*, which is recognized as a better indicator of potential pathogens for assessment of recreational uses. EPA approves this revision.

Part H. Primary Contact. The Pueblo of Tesuque removed the fecal coliform criteria from the standards for segments designated for primary contact. The criteria for *E. coli* were retained in the standards. The units for the *E. coli* criteria were revised from colonies/100 milliliters to most probable number (MPN)/100 milliliters.

EPA review: As discussed above, the Pueblo of Tesuque, and most other states and tribes, have transitioned from fecal coliform criteria to *E. coli* criteria for monitoring of surface water quality. The removal of the fecal coliform bacteria criteria is consistent with EPA guidance for protection of recreational uses. The revised units of MPN/100 ml for the *E. coli* criteria are consistent with EPA guidance and the regulation at 40 CFR part 136. EPA approves this revision.

Section VI. Water Quality Definitions

"Best Management Practices": The Pueblo of Tesuque expanded the definition to include the language related to best managements practices used in the NPDES permitting program.

EPA review: This change reflects current EPA regulation at 40 CFR part 122. The expanded definition of attainable use does not change the meaning or interpretation of the WQS. It provides clarification for implementation of various provisions of the standards and is approved under CWA section 303(c).

"*Escherichia coli* (or *E. coli*)": The Pueblo of Tesuque added a definition for *E. coli* bacteria.

¹ National Academy of Sciences, National Academy of Engineering. 1973. *Water Quality Criteria 1972*. EPA-R3-73-003. U.S. Government Printing. Office. Washington, D.C.

EPA review: The definition of *E. coli* is consistent with technical references and provides clarification for implementation of various provisions in the water quality standards. EPA approves this definition.

Appendix 1 – Ammonia Criteria

The Pueblo Tesuque revised the ammonia criteria based on EPA’s recommended criteria for the protection of aquatic life published under CWA section 304(a). The acute criterion is based on Table 5a from EPA’s 2013 criteria document, as species with similar sensitivities as the genus *Oncorhynchus* may be present in the Pueblo of Tesuque’s waters. A duration and frequency component is included for both the acute and chronic criteria.

EPA review: EPA approves the ammonia criteria in Appendix I, which are consistent with the agency’s criteria recommendations.

Other Revisions in the *Pueblo of Tesuque Water Quality Standards*

Several revisions are non-substantive in nature and thus do not substantively modify the *Pueblo of Tesuque Water Quality Standards*. The numbering system in Section VI. Definitions was removed. Under Appendix 2. Antidegradation Implementation Flow Chart, the “yes/no” decision factors were corrected under several steps to represent the intent of the antidegradation review process. In addition, other wording or punctuation changes were made in the standards which were merely grammatical changes or changes in phrasing that do not alter the meaning or implementation of the *Pueblo of Tesuque Water Quality Standards*.

EPA review: EPA considers such non-substantive edits to existing standards to constitute new or revised standards that EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3). While such revisions do not substantively change the meaning or intent of the existing standards, EPA believes that it is reasonable to treat such non-substantive changes in this manner to ensure public transparency on what provisions are effective for purposes of the CWA. EPA notes that the scope of its action in reviewing and approving or disapproving such non-substantive changes would extend only as far as the actual non-substantive changes themselves. In other words, EPA’s action on non-substantive changes to previously approved standards would not constitute an action on the underlying previously approved standards. Any challenge to EPA’s prior approval of the underlying standards would be subject to any applicable statute of limitations and prior judicial decisions. EPA approves the listed non-substantive changes in the *Pueblo of Tesuque Water Quality Standards* pursuant to CWA section 303(c).

II. REVISIONS IN THE 2005 STANDARDS, PREVIOUSLY APPROVED FOR PURPOSES OF CWA SECTION 303(C)

EPA previously approved the items in Part II of this enclosure, subject to the outcome of consultation under section 7(a)(2) of the Endangered Species Act. Based on the evaluation conducted for the 2015 triennial revision, EPA concludes that there is no effect on federally-listed species or on critical habitat, as a result of the previous approval of the following revisions.

Section III. General Standards

Part B. Floating Solids, Oil, and Grease. The following language was to the narrative standard: “which could damage or impair the normal growth, function or reproduction of human animal, plant or aquatic life.”

Part H. Mixing zones. The provision for mixing zones was modified to allow calculation based on the critical low flow in a stream.

Section IV. Water Body Uses and Standards Specific to Use

Parts C. Acute Fishery Criteria and Part D. Chronic Fishery Criteria Aquatic life criteria for the following substances were revised based on EPA’s section 304(a) recommendations at the time of adoption: arsenic, cadmium, chromium, copper, lead, nickel, silver and zinc.

Part E. Livestock Watering & Wildlife Habitat Use. The arsenic criterion was revised based on recommendations in EPA guidance.

III. REVISIONS IN THE 2015 WQS FOR WHICH EPA IS TAKING NO ACTION UNDER CWA SECTION 303(C)

Section IV. Water Body Uses and Standards Specific to Use

Under Part E. Livestock Watering & Wildlife Habitat Use, Part F. Irrigation Use, and Part G. Groundwater Recharge, the units in the heading of each criteria table were inadvertently revised from milligrams/liter to micrograms/liter. EPA is taking no action on this clerical error. The previously-approved criteria with units of milligrams/liter, as applicable in the 2006 *Pueblo of Tesuque Water Quality Standards*, remain in effect for CWA purposes for these designated uses. The errors and severability clause in Section I. F. Revisions and Public Hearing, of the *Pueblo of Tesuque Water Quality Standards* allows the Pueblo of Tesuque to correct this inadvertent error.